

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

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|---------------------------|---|-----------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:08CR267 |
| |) | |
| v. |) | |
| |) | |
| JUAN CORREA-GUTIERREZ, |) | ORDER |
| |) | |
| Defendant. |) | |
| |) | |

This matter is before the Court on defendant's application to proceed without prepayment of fees and affidavit (Filing No. [131](#)) and application for certificate of appealability (Filing No. [132](#)). Defendant wishes to appeal whether the district court abused its discretion in denying defendant's 28 U.S.C. § 2255 motion on the basis that the decision of the Supreme Court in *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), is not retroactive. The Court finds the motions should be granted and that defendant may appeal this issue. Accordingly,

IT IS ORDERED:

- 1) Defendant's motion is granted; defendant is permitted to proceed on appeal without prepayment of fees and expenses.
- 2) Defendant's application for a certificate of appealability is granted; defendant may appeal the issue of

whether the Court abused its discretion in denying his 28 U.S.C. § 2255 motion.

DATED this 21st day of June, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court